

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-872

February 3, 1999

BELL ATLANTIC - MAINE  
Request for Approval of  
Interconnection Agreement with  
Network Access Solutions, Inc.

ORDER REJECTING  
INTERCONNECTION  
AGREEMENT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, we reject, without prejudice, an interconnection agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic (Bell Atlantic) and Network Access Solutions, Inc. (NAS), pursuant to section 252 of the Telecommunications Act of 1996.

On November 10, 1998, Bell Atlantic filed a negotiated interconnection agreement with NAS, pursuant to 47 U.S.C. § 252 enacted by the Telecommunications Act of 1996. Interconnection agreements provide for interconnection between an incumbent local exchange carrier (ILEC) and another telecommunications carrier, including a competitive local exchange carrier (CLEC). An interconnection agreement may allow a telecommunications carrier to purchase unbundled network elements, or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an ILEC (or CLEC)

The agreement does not incorporate a definition of "Local Traffic" although that term is referred to elsewhere the agreement.<sup>1</sup> Other interconnection agreements we have approved include such a definition. Bell Atlantic has explained orally that NAS had stated that most of its traffic would be special access service for connecting customers on a dedicated basis with internet service providers, and that accordingly the parties agreed that such a definition was unnecessary.

The agreement provides that NAS will provide those services "(i) by using Network Elements obtained from BA, (ii) reselling certain BA Telecommunications Services and (iii) collocating its equipment in BA Central offices." The agreement provides that

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<sup>1</sup>For example, the in ¶ 1.29, the agreement states that "'IntraLATA Toll Traffic' means those intraLATA calls that are not defined as Local Traffic in this Agreement."

"BA shall make available to NAS for resale all Telecommunications Services as described in Section 251(c)(4) of the [Telecommunications Act of 1996], pursuant to the rates, terms and conditions set forth in Exhibit A." That exhibit, "Pricing Schedule," refers to both "Local Traffic" and "Toll Traffic" as criteria for establishing prices to be paid by NAS. The agreement defines "IntraLATA Toll Traffic," but only as "those intraLATA calls that are not defined as Local Traffic in this Agreement." Thus, effectively, there is no definition for either "local" or "interexchange" traffic.

The agreement acknowledges that NAS will furnish dial tone to customers, and provides NAS-specific measurement report elements for "POTS" (Plain Old Telephone Service). Exhibit A contains provisions for 911/E911 interconnection and unbundled local switching. We conclude from the presence of these elements that the agreement may be applicable to NAS's provision of local and interexchange services as well as to special access service.

The lack of a definition of "Local Traffic" and of an effective definition for "IntraLATA Toll Traffic" does not appear to create a problem for the dedicated special access traffic that NAS apparently claims will constitute "most" of its traffic. For all traffic not using dedicated special access, the lack of those definitions creates confusion regarding the applicability of access charges pursuant to Chapter 280 of the Commission's Rules. Accordingly, it creates the potential for protracted litigation on that matter.

On January 14, 1999, the Presiding offices issued a Procedural Order in this proceeding that advised the parties that "[t]he Commission Staff has tentatively decided to recommend to the Commission that it reject the agreement ... as contrary to the public interest, convenience and necessity." The Procedural Order, which included a draft of this Order, was forwarded by facsimile to both parties to the agreement and to the Public Advocate, requesting comments on the draft order by Friday, January 22, 1999. We received no comments in response to the Procedural Order.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We find that the omissions described herein mean that the agreement filed by Bell Atlantic is not consistent with the public interest, convenience and necessity.

If the parties to the agreement modify the agreement to incorporate an acceptable definition of "Local Traffic," and as a result an effective definition of "Intra LATA Toll Traffic," we will reconsider our rejection of the agreement, which we reject without prejudice.

**ORDERING PARAGRAPH**

Accordingly, we

Reject, without prejudice, the Interconnection Agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic and Network Access Solutions, Inc., attached hereto, pursuant to 47 U.S.C. § 252(e), for the reasons set forth in the body of this Order.

Dated at Augusta, Maine this 2nd day of February, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
                                                 Nugent  
                                                 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.